IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3053 OF 2007
WITH
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Ghanshyamdas Sagarmal Shah Bros. & Anr. ..Petitioners.
Vs.
The Greater Bombay Co-op. Bank Ltd. ..Respondents.

Mr.Jayantilal M. Shah, adv. for the Petitioners.
Mr.Sameer Bhalekar, adv. for the Respondents.

CORAM : J.H.BHATIA, J.
DATE : JULY 13, 2007.

P.C.

1. In all these three writ petitions, common questions of law and facts arise. Heard the learned counsel for the Parties. Perused the copies of the relevant record.

2. To state in brief, the respondent no.1 is a co-operative bank and it has filed disputes bearing nos.CC-1/753, CC-1/754 and CC-1/755 of 1987 against the present petitioners for recovery of certain amount including principal amount of loan as well as interest. In all the three matters, awards came to be passed by the Co-operative Court on 21-9-1989. On 26th December, 1998 the Special Recovery Officer issued notice to the petitioners informing them finally to make the payment of the amount under the award and also by the said

notice, he informed petitioners that if as per the said notice, the matter was not settled on or before 5th January, 1999, they would be left with no option except to execute the decree. On 5th August, 2002 the Special Recovery Officer issued notice before attachment to the petitioners. After receipt of the said notice, petitioners filed disputes bearing nos.CC-1/246, CC-1/248 and CC-1/249 of 2002 challenging the said notice and seeking declaration that award/decree passed by the Co-operative Court in 1989 had become time barred and, therefore, the same could not be executed. The trial Court dismissed the disputes. The petitioners challenged the dismissal of disputes by preferring Appeal Nos.153, 154 and 155 of 2006. After hearing the parties, the learned Appellate Court found that execution of decree was within limitation. Besides that the learned trial Court came to conclusion that the disputes themselves are not tenable under the law. Being aggrieved by the dismissal of the appeals, petitioners have preferred these Writ Petitions under Article 227 of the Constitution of India.

3. Admittedly the awards were passed against the petitioners and in favour of respondent no.1. in the year 1989. The Special Recovery Officer issued impugned notices by virtue of powers under Section 156 of Maharashtra Co-operative Societies Act and under

Rule 107 framed under the said Act. Admittedly the Special Recovery Officer is the executing authority under Section 156 of Maharashtra Co-operative Societies Act. Section 91 of Maharashtra Co-operative Societies Act defines dispute which can be filed before the Co-operative Court. However, proviso to Sub-section 1 of Section 156 makes it clear that the recovery proceeding of the Registrar or any officer subordinate to him or an officer of such society as may be notified by the State Government, who is empowered by the Registrar, under Sub-section (1) of Section 156 shall not be deemed to be a dispute for the purposes of Section 91. Thus, the proceeding, which is before the Special Recovery Officer for the purpose of executing award/decree already passed by the Co-operative Court is excluded from the definition of dispute under Section 91 of the Co-operative Societies Act. If it is so, the dispute pertaining to the said proceeding before the Special Recovery Officer can not be filed under Section 91.

4. Section 47 of the Civil Procedure Code specifically provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree

and not by a separate suit. Same analogy will be applicable in case of execution of award passed in a dispute by the Co-operative Court. Sub-section (2) of Section 156 of the Co-operative Societies Act declares that the Registrar or the officer empowered by him shall be deemed, when exercising powers under Sub-section (1) or when passing any orders on any application made to him for such recovery, to be Civil Court for the purpose of Article 136 of the Schedule to the Limitation Act. This makes it clear that the Special Recovery Officer executing the award passed by the Co-operative Court is a Civil Court within the meaning of Article 136 of the Limitation Act and he can decide all the questions, which may be raised about limitation or otherwise pertaining to the execution of the decree/award.

5. In view of the legal position stated above, there remains no doubt that the disputes, filed by the petitioner seeking declaration that the decrees/awards passed in favour of the respondent no.1 in the disputes filed earlier were barred by the limitation are not tenable under Section 91 of the Co-operative Societies Act. Such questions or objections could be raised before the Special Recovery Officer, who has to decide the same as if it is Civil Court under Article 136 of the Limitation Act. As such Co-operative Court had no

jurisdiction to entertain the disputes and in the result, the Courts below were justified in dismissing the same.

6. For the aforesaid reasons, these petitions stand dismissed summarily. However, the petitioners shall be at liberty to raise objections of limitation to the execution of decree before the Special Recovery Officer, who being the executing authority shall decide the same as per the facts and provisions of law. The respondent no.1 shall not take any objection before the Special Recovery Officer on the ground of delay in taking such objection in view of the fact that petitioners were agitating the question of limitation by filing disputes, then appeals and then writ petitions before this Court. The petitioners shall approach the Special Recovery Officer within four weeks for taking the objections if any to the execution of the decree/award and the Special Recovery Officer shall not take any steps in execution of the said awards during the said period of four weeks and till decision of their objections.

[J.H.BHATIA, J.]